

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED

JUN 03 2015

Clerk, U.S. District Court
District Of Montana
Missoula

TED BONIECKI,

Plaintiff,

vs.

TIM FOX and STATE OF MONTANA,

Defendants.

CV 15-19-H-DLC

ORDER

United States Magistrate Judge John T. Johnston entered his Findings and Recommendation on March 17, 2015 recommending that Boniecki's Complaint be dismissed with prejudice for failure to state a claim upon which relief may be granted. Boniecki timely objected to the Findings and Recommendation and the Court will conduct *de novo* review of the record. 28 U.S.C. § 636(b)(1). The portions of the findings and recommendations not specifically objected to will be reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). For the reasons listed below, the Court adopts Judge Johnston's Findings and Recommendation in full.

Boniecki filed his Complaint claiming the use of the Law Enforcement Information Network (LEIN) system violates his Fourth, Fifth, and Fourteenth

Amendment rights and his right to privacy. Boniecki first objects to Judge Johnston's finding that the Complaint fails to state a claim, stating that he believes he has a claim under the Fourth Amendment. However, Boniecki does not allege that he has been subject to a traffic stop or LEIN search. Law enforcement officers who see a license plate in plain view and use it to access non-private information do not conduct a Fourth Amendment search. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Boniecki has failed to state a claim upon which relief may be granted implicating his Fourth Amendment constitutional right.

Second, Boniecki objects to Judge Johnson's characterization that the Complaint is incoherent and rambling, arguing that a jury would be able to comprehend his Complaint. Whether or not a jury could comprehend Boniecki's Complaint is irrelevant. Judge Johnston's characterization was in the context of the pre-screening review required by 28 U.S.C. § 1915(e)(2). To the extent that Boniecki is objecting to Judge Johnston's finding that his Complaint is frivolous, Boniecki has failed to allege a constitutional violation as stated above. Further, the Complaint names Tim Fox and the State of Montana as the sole defendants, but does not allege a connection or link between the actions of the defendants and the deprivation alleged.

Third, Boniecki objects to the case-law cited in Judge Johnston's Findings

and Recommendation on the grounds that they are not “jury cases” and states that a jury should decide the law. (Doc. 6 at 1.) However, as stated above, Boniecki has failed to allege violation of his constitutional rights and does not state a viable claim under 42 U.S.C. § 1983. Without a viable claim for relief, Boniecki does not have anything to bring before a jury.

Lastly, Boniecki objects to Judge Johnston’s finding that he has not alleged that he was subject to a traffic stop and subsequent LEIN search. Boniecki states that anytime he drives on the roads in the State of Montana he is potentially subject to a LEIN license plate search. Bare allegations are insufficient grounds to show entitlement to relief. Further, as stated above, plain view license plate searches for non-private information does not constitute a Fourth Amendment search. Boniecki’s Complaint would not be cured by the allegation of other facts.

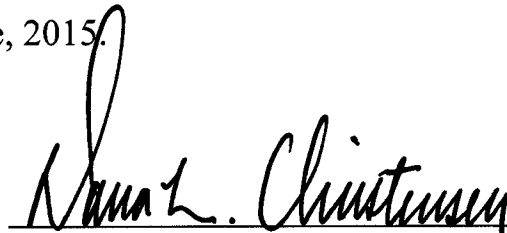
There being no clear error in Judge Johnston’s remaining Findings and Recommendation,

IT IS ORDERED that Judge Johnston’s Findings and Recommendation (Doc. 5) are ADOPTED IN FULL. Boniecki’s Complaint (Doc. 2) is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that the Clerk of Court shall close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the docket shall reflect that the Court certifies pursuant to Fed.R.App.P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith.

DATED this 3rd day of June, 2015.

A handwritten signature in black ink, reading "Dana L. Christensen", written over a horizontal line.

Dana L. Christensen, Chief Judge
United States District Court